

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

UNITED STATES OF AMERICA,)	CASE NO. 5:11CR393
)	
PLAINTIFF,)	JUDGE SARA LIOI
)	
vs.)	
)	OPINION & ORDER
)	
)	
BRIAN P. HORTON,)	
)	
DEFENDANT.)	

Before the Court is a motion filed by defendant Brian Horton (“defendant”) seeking discovery and a dismissal of the indictment (Doc. No. 90). While the hand-written motion purports to be brought “by and through counsel,” the docket reflects the fact that the motion was filed by defendant without the aid of counsel. (*See* Doc. No. 90-1, envelope mailed by defendant from correctional facility.) Because defendant has been determined to be incompetent, and because he is represented by counsel, his pro se motion is denied. *See United States v. Green*, 388 F.3d 918, 922-23 (6th Cir. 2004) (no right to “hybrid representation,” that is simultaneously representing oneself while being represented by an attorney, and the decision to allow such representation is left to the discretion of the trial court) (citing *United States v. Mosley*, 810 F.2d 93, 98 (6th Cir. 1987)); *Abdullah v. United States*, 240 F.3d 683, 686 (8th Cir. 2001) (“A district court has no obligation to entertain pro se motions filed by a represented party.”) In addition, the Court finds that the motion lacks merit, as the indictment sets forth the elements of the offense under 18 U.S.C. § 876(c). *See United*

States v. Rendelman, 641 F.3d 36, 44 (4th Cir. 2011) (“A violation of § 876(c) requires three elements: first, that the accused caused a communication to be delivered by the Postal Service, addressed to any other person (the “Mailing Element”); second, that the communication contained a threat to injure the person of the addressee or another (the “Threat Element”); and, third, that the defendant knowingly mailed the threatening communication (the “Mens Rea Element”) (citing 18 U.S.C. § 876(c)).

IT IS SO ORDERED.

Dated: June 21, 2013



HONORABLE SARA LIOI
UNITED STATES DISTRICT JUDGE